



REGIONAL PERMIT

US Army Corps
of Engineers
Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435
Fax No. 505-342-3498

Regional Permit No:	Issuance Date:
2001 00315	January 10, 2002
Phone:	Expiration Date:
(505) 342-3283	January 10, 2007

In Reply Refer to:

District Engineer, ATTN: CESP-OD-R

this permit are listed below.

Scope Restrictions:

a. Regional permit activities authorized by this regional permit for channel modification in headwaters will be for those projects in the State of New Mexico which exceed the requirements of a nationwide permit, but are less than or equal to 1 acre of loss of waters of the United States, and are less than 600 linear feet in length, and are more than 100 linear feet from a perennial stream or the perennial reach of an intermittent stream.

Discharges of dredged or fill material in the following areas are not authorized under this Regional Permit and will require consideration for authorization under other general or individual permitting procedures.

(1) Projects located in riparian zones immediately adjacent to waters of the United States.

(2) Special aquatic sites, including wetlands, in or adjacent to, waters of the United States.

(3) Perennial waters of the United States or perennial reaches of intermittent waters of the United States.

(4) Projects located within 1 stream linear mile of any other channel modification project.

b. Streambank stabilization. The placement of dredged or fill material is authorized for permanent streambank erosion protection.

Material to be used for riprap must be durable rock or broken concrete free of asphalt, degradable substances or protruding rebar.

No additional length or quantity restrictions are imposed other than the regional permit maximums; however, no material is to be placed in excess of erosion protection.

No material is to be placed in any wetland area or restrict flows into or out of wetlands.

Only clean material free of waste metal products, organic materials, unsightly debris, etc., is to be used.

c. Channelization, channel shaping, bank reshaping, grade control. The placement of dredged or fill material is authorized for channelization, for work which changes the course (realignment) of a stream channel, and as needed to shape a channel within its easement boundaries. This includes stabilization of the prudent line.

No additional length or fill quantity restrictions are imposed other than

REGIONAL PERMIT

UNDER SECTION 404 OF THE CLEAN WATER ACT (33 USC 1344) for Channel Modification in Headwaters in the State of New Mexico

Purpose of this Regional Permit: The purpose of this regional permit is to streamline the permitting process for minor, non-controversial projects which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. An individual Department of the Army permit may be required for activities which do not meet the requirements of this regional permit.

Permittees: The permittees include cities, towns and villages, counties, land developers, contractors, State agencies, Federal agencies, Tribal agencies, and private citizens.

Permit Area: The regional permit is applicable in all headwaters of the United States, excluding wetlands, within the State of New Mexico.

Required Water Quality Certification: Use of this regional permit is not valid without a Section 401 Water Quality Certification prior to start of construction activities. In accordance with Section 401 of the Clean Water Act, water quality certification must be obtained from the appropriate state, federal (U.S. Environmental Protection Agency) or tribal government prior to construction of the proposed activity.

Scope of Work and Authorized Materials: Activities authorized by this regional permit are limited to channel modification in headwaters within the permit area. Typically, headwaters of the United States within the permit area are ephemeral streams or ephemeral reaches of intermittent streams, excluding wetlands. A full description of the activities and conditions for

the regional permit maximums.

Channel invert and banks may be reestablished by transporting eroded material from downstream to upstream segment.

The project may not cause significant adverse impacts on downstream conditions.

d. Channel lining. Authorized linings may be concrete, riprap, wire-wrapped rock, rock cover, soil cement, synthetic materials, or vegetation. The purpose of the work is to improve the effective ability of the arroyo to transport water and/or safe containment of flood flows.

No additional length or fill quantity restrictions are imposed other than the regional permit maximums.

The project may not cause significant adverse impacts on downstream conditions.

e. Drop structures, energy dissipaters. Concrete, gabion, soil cement, massive riprap, sheet-piling, or rock-and-wire structures, including subgrade fill and preparation, are authorized.

The structure will be constructed in a manner to allow passage of the developed 100-year storm with no significant adverse impacts to surrounding properties. This will include all measures necessary for adequate erosion protection.

f. Detention dams and ponds. The discharge of dredged and fill material to construct dams and ponds to trap storm water, then release it at an acceptable rate, is authorized. The ponds may be tied-in to a storm sewer system later.

Ponds may or may not be located in a water of the U.S. Ponds not in waters of the U.S. do not require a Section 404 permit.

Dams can restrict streamflow only to the extent that no significant adverse effects will occur to adjacent properties.

Design of dams must be consistent with drainage planning for the basin. State and Federal dam safety regulations must be followed, if applicable.

The conveyance system will be constructed in a manner to allow passage of the developed 100-year storm with no significant adverse impacts to surrounding properties. This will include all measures necessary for adequate erosion protection.

g. Channel in culverts or storm drains. Encasement of an arroyo in an

underground culvert or sewer for part of its route is authorized. Dams and ponds may be drained by storm sewers.

The structure will be constructed in a manner to allow passage of the developed 100-year storm with no significant adverse impacts to surrounding properties. This will include all measures necessary for adequate erosion protection.

h. Diversions. Diversions including constructed channels, dikes, and cut-off structures which combine arroyo flows are authorized. Diversions typically reduce or eliminate magnitude and frequency of flow in up to several miles of arroyo.

Dikes and cut-off structures of varying height may be built with or without slope protection.

Appropriate revegetation of disturbed areas and structures will be performed where applicable.

No increase in baseflow velocities will occur above or below an individual project or authorized activity as a result of the authorized activity.

The project may not cause significant adverse impacts on downstream conditions.

i. Maintenance excavation. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed.

j. Soil Bioengineering. Soil bioengineering techniques such as rock dams, willow pole plantings, picket baffles, and bank posts are authorized to construct naturally-sustaining, low maintenance, stable stream corridors which provide a full range of aquatic and riparian functions.

Duration of the Regional Permit: This regional permit authorizes activities begun within 5 years and completed within 6 years after the date of issuance, unless the permit is revoked in the interim. Activities completed under authorization of the regional permit which was in effect at the time the activity was completed continue to be authorized by the regional permit.

Notification Procedures: The permittee must first notify the Corps of Engineers in writing. Work cannot proceed until the Corps of Engineers has provided written approval to the permittee. The permittee must provide the following information:

a. A complete description of the work, including a clear statement of project objectives, the project's purpose, direct and indirect adverse environmental effect the project would cause, and any NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Describe the material to be excavated or used as fill, including the composition, source, and volume in cubic yards, and area (including all dimensions) of waterway to be excavated or filled. Indicate stream parameters such as stream size, slope, approximate design velocities, existing uses (e.g., livestock watering), and details of how any structures will be anchored.

b. Project location including name of waterway, nearest town, county, and Section, Township, Range.

c. Documentation (a scaled 8-1/2" x 11" map or other documentation) identifying the location of all other channel modification projects within 1 stream linear mile of the proposed project.

d. Drawings or sketches on 8-1/2" x 11" paper showing the project location, the plan or top view of all work subject to Section 404, and cross-sectional or side views of the work.

e. The applicant must also provide a written statement explaining how avoidance and minimization of losses of waters of the United States and adverse effects to the aquatic environment were achieved on the project site.

f. The applicant must provide a compensatory mitigation plan to balance the unavoidable loss of waters of the United States. The plan must include baseline information on the proposed project area, mitigation goals, a mitigation work plan, success criteria, a monitoring plan, a contingency plan in case of failure, site protection, financial assurances, and the responsible party for long-term maintenance. The least damaging practicable alternative will be selected.

The information should reference Regional Permit No. 2001 00315 and be sent to:

District Engineer
Albuquerque District, US Army Corps of Engineers
ATTN: Regulatory Branch

4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435
Telephone: (505) 342-3283

For sites of less than or equal to 1/2 acre loss of waters of the United States, the Corps of Engineers will perform an in-house review of the application. For sites greater than 1/2 acre, the Corps of Engineers will coordinate the notification with other Federal and state agencies to solicit their views on the environmental effects of the proposed work. The Corps will transmit a copy of the application to the Federal and state resource and regulatory agencies in New Mexico for their review and comment. After considering agency comments, the Corps of Engineers may add special conditions to ensure that the adverse environmental impacts are minimal, or may decide that an individual permit application is required. The Corps of Engineers will review the proposal and inform the applicant if the work may proceed under the authorization of this regional permit or will require an individual permit. The Corps will also review the project purpose with regard to floodplain impacts.

Emergency actions are not authorized by this regional permit.

Conditions of the Regional Permit: All activities authorized under this regional permit are subject to the following conditions.

a. **Special Conditions.** The permittee must comply with any case-specific special conditions which may be added by the Corps of Engineers to a specific activity.

b. **Proper Maintenance.**

1. **Proper Maintenance:** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety. Should the permittee wish to cease to maintain the authorized activity or desire to abandon it without a good faith transfer, the permittee must obtain a modification of this regional permit activity from this office, which may require restoration of the area.

2. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions. The activity must not permanently restrict or impede the

passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill materials must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions. The activity must, to the maximum extent possible, reduce adverse effects of flooding or erosion downstream, unless the activity is part of a larger system designed to manage water flows.

3. Adverse Effects from Impoundments. If the activity creates an impoundment of water, adverse effects on the aquatic system caused by accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent possible.

4. Removal of Temporary Fills. All temporary fills will be removed in their entirety and the affected areas returned to their preexisting elevation.

c. Water Quality.

1. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill materials, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent to bank stabilization.

2. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction. All exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.

3. Pollution. Heavy equipment use in the stream or water body will be avoided whenever possible. If it is necessary to operate within the stream, all equipment will be steam cleaned prior to used, and inspected at regular intervals to avoid petrochemical leaks or fills into the waterway.

4. Restriction of Construction Period. Construction operations will be conducted during non-flow periods to the extent practicable.

5. Revegetation. All areas above the ordinary high water mark

disturbed by construction will be revegetated with native vegetation to prevent erosion. All woody riparian vegetation unavoidably lost will be replaced with native vegetation at a 2:1 ratio ensuring survival.

6. Wetlands. No construction or discharges in special aquatic sites, including wetlands, is authorized.

7. Suitable Materials. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

8. Fuel and Petrochemicals. To prevent introduction of petrochemicals into waters of the United States, fuel, oil, hydraulic fluid, and lubricants stored within the floodplain must have a secondary containment system to prevent spills. Contain and remove any petrochemical spills, including contaminated soil, and dispose of these materials at an approved upland site. Refueling of equipment must not take place within 100 feet of any water of the United States, including wetlands.

9. Spill Kits. Spill cleanup materials (e.g., absorbent pads, booms) must be available onsite at all times during construction and maintenance activities. Spills should be reported immediately to the appropriate surface water quality agency.

10. Impaired Waters. Projects affecting waterbodies with impaired water quality under Section 303d of the Clean Water Act require notification to the appropriate state or federal surface water quality agency. On non-tribal lands in New Mexico, the New Mexico Environment Dept. is the appropriate agency. On Tribal Lands, the U.S. Environmental Protection Agency, Region 6 or Region 9 (Navajo Tribal Land) is the lead agency.

d. Fish and Wildlife.

1. Spawning Areas. Activities in spawning areas are not authorized by this regional permit.

2. **Waterfowl Breeding Areas.** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided.

3. **Aquatic Life Movements.** No activity shall substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

4. **Endangered Species.**

(a) No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species.

(b) Authorization of an activity by a regional permit does not authorize the 'take' of a threatened or endangered species as defined under the Federal Endangered Species Act.

e. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in official study status.

f. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

g. **Historic Properties.** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing in the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied

and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the New Mexico State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

h. **100-Year Floodplain Fills.** Discharges of dredged or fill materials into headwaters of the United States resulting in permanent, above grade fills in the floodway or floodfringe are not authorized unless the applicant provides documentation that the proposed permanent, above grade fills comply with Federal Emergency Management Agency (FEMA) or FEMA-approved local floodplain construction requirements.

i. **Inspection.** Representatives from the Corps of Engineers must be allowed to inspect the authorized activity at any time deemed necessary to ensure it is being, or has been accomplished, in accordance with the terms and conditions of the permit.

Further Information:

a. **Congressional Authorities:** This regional permit is authorized pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

b. **Other Laws:** The permittee is responsible for obtaining all other Federal, state, or local authorizations required by law.

c. **Limits of this Authorization:** This regional permit does not grant any property rights or exclusive privileges; does not authorize any injury to the property or rights of others; and does not authorize interference with any existing or proposed Federal project.

d. **Limits of Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following: damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; damages to

persons, property, or to other permitted or unpermitted activities or structures caused by the activities authorized by this permit; design or construction deficiencies associated with the permitted work; or damage claims associated with any future modification, suspension, or revocation of this permit.

e. **Reevaluation of Permit Decision:** The Corps of Engineers may reevaluate its decision on this regional permit or individual activities authorized under this regional permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: the permittee fails to comply with the terms and conditions of this regional permit; the information provided by the permittee in support of their notification proves to have been false, incomplete, or inaccurate; or significant new information surfaces which the Corps of Engineers did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of the regional permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by the Corps of Engineers, and if fails to comply with such directive, the Corps of Engineers may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

f. **Renewal of the Regional Permit:** This regional permit may be reviewed for reissuance prior to its expiration date. Any reissuance will be processed in accordance with 33 CFR 325.2 including a public notice and environmental procedures and documentation required by the National Environmental Policy Act of 1969.

Definitions:

APPLICANT - A person or organization who has applied to the Corps of Engineers to discharge dredged or fill material into waters of the United States.

ARROYO - A channel through which water at least occasionally flows and

which has an identifiable bed and bank. For the purposes of this regional permit, the landward limits of an arroyo are the ordinary high water mark or adjacent wetlands.

AUTHORIZED REGIONAL PERMIT ACTIVITY - A project described within the Scope of Work and Authorized Materials section which has been self-certified to meet the terms and conditions of this regional permit, and which has been assigned an authorization number and date by the Corps.

CONDITIONS - Each user of this regional permit is required to comply with the conditions for the activity to be constructed and the conditions listed in pages 3 through 5 of this regional permit.

DEVELOPED 100-YEAR STORM - A storm whose precipitation within a six (6) hour period and resulting runoff has a one percent chance of being equaled or exceeded in any given year. Special conditions may require/allow use of storms of longer duration. The watershed is calculated to be fully developed in accordance with adopted community standards.

DREDGED MATERIAL - Any material that is excavated or dredged from waters of the United States.

DROP STRUCTURE - A structure to drop water to a lower level and, in so doing, dissipate its surplus energy, decrease streamflow velocity, minimize channel scour, and/or promote sediment deposition.

EMERGENCY ACTION - A situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to submit a self-determination regional activity.

FILL MATERIAL - Any material used for the primary purpose of replacing an aquatic area (water of the U.S.) with dry land or of changing the bottom elevation of any waterbody.

GENERAL PERMIT - Either a nationwide or regional permit authorizing projects of limited scope which have minimal individual and cumulative impacts.

HEADWATERS - "Headwaters" means the point on a non-tidal stream above which the average flow is less than five cubic feet per second. For streams that are dry for long periods of the year, the "headwaters" is established as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

INDIVIDUAL PROJECT - A single, complete project which is independent of other projects which need another permit authorization, and which can be completed within the time constraints of its authorization without the need of additional authorization. A single complete project can be made up of any authorized activity or a combination of activities described within the Scope of Work and Authorized Materials section .

IRRIGATION FACILITY - Structures, ditches and drains appurtenant and functionally related to irrigation. Examples are siphons, pumps, headgates, wingwalls, weirs, diversion structures, etc. These are exempted from regulation under the Section 404 program -- see 33 CFR 323.4(a)(3). The maintenance, but not the construction, of drainage ditches is exempt.

LOSS OF WATERS OF THE UNITED STATES - Includes the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity. The acres of loss is the threshold measurement of the impact to existing waters for determining whether a project may qualify for this regional permit. Waters that are temporarily filled, flooded, excavated, or drained but are restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States.

MAINTENANCE - Reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, riprap, abutments, etc. "Currently serviceable" includes failure within the last year. Maintenance does not include any modification that changes the character, scope, or size of the original fill design.

NATURAL - An area or waterway which has not been impacted or influenced by humans or which human impact is not controlling or significantly greater than other animals.

NATIONWIDE PERMIT - A form of general permit which authorizes activities throughout the nation. Nationwide permits are valid only if the conditions applicable to the nationwide permits are met. Notification to the District Engineer is generally not required to use a nationwide permit.

ORDINARY HIGH WATER MARK - That line on the shore established by

the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the streambank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, etc. In ephemeral arroyos, the OHWM usually can be found in the channel bottom, but may not necessarily include shelves or benches.

PERMITTEE (this Regional Permit) - A person or organization who has requested authorization which has a Corps-assigned number to discharge dredged or fill material into waters of the United States under provisions of a this regional permit.

PRUDENT LINE - Also referred to as "Erosion limit line." That line which will not be disturbed by erosion, scour, or meandering of a natural (unlined) arroyo, channel or watercourse over a period of thirty (30) years and which will not be disturbed by a 100-year storm occurring at any time during the 30 year period. The prudent line shall be so located as to include all free board required to contain the wave action of the 100-year design storm.

REGIONAL PERMIT - A form of general permit which authorizes activities that are substantially similar in nature and cause only minimal individual or cumulative environmental impacts within a specified region. The regional permit may include conditions specific to the type of projects to be authorized.

RIPARIAN VEGETATION - A community of plants growing along the streambank of a stream or other body of water.

RIPRAP - A layer of rock of sufficient size and thickness to resist erosive forces of flowing water or wave action.

SHAPING - The banks of a channel within an easement which are re-contoured by mechanical action.

STREAMBANK - The side slopes of a stream channel between which streamflow is normally confined.

STREAMBED - The bottom of the area occupied by a natural or manmade stream (within ordinary high water)

STREAM CHANNEL - The area through which water at least occasionally flows and which has an identifiable bed and bank. For purposes of this regional permit, the landward limits of a stream channel are the ordinary high water mark or adjacent wetlands.

STREAM CHANNELIZATION - The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of flow through the stream channel. A channelized stream remains a water of the United States, despite the modifications to increase the rate of water flow.

STRUCTURE - A constructed device used to modify floods in a way that reduces flood damage to land, people or property. Examples include dams, levees, diversions, channels, pipes, and bank protection devices.

TEMPORARY - Not permanent. For the purposes of this regional permit, lasting for less than one calendar year.

WATERS OF THE UNITED STATES - Essentially all intermittent and perennial streams, lakes, impoundments, and wetlands. More specifically: all waters which are, were, or could be used in interstate or foreign commerce, all interstate waters, all other waters the destruction of which could affect interstate or foreign commerce (including migratory bird used), all impoundments of any of these waters, tributaries of these waters, and wetlands adjacent to these waters. (See 33 CFR 328 for full definition.)

Authorizations from Other Agencies: The permittee is responsible for obtaining all other required federal, state, or local permits where applicable. This regional permit does not supersede local zoning or land use requirements or regulations.

Raymond G. Midkiff
Lieutenant Colonel, EN
District Engineer